IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9309 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALJIBHAI B PATEL - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR OM PRAKASH KHURANA for Petitioner : MR GR MALHOTRA for Petitioner
MS AVANI S MEHTA for Respondents

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned counsel Mr.Khurana for the petitioner and Ms.Avni Mehta for the respondents.

The petitioner was dismissed from service for remaining absent from 29.12.1982 to 7.3.1983. His appeal was dismissed by the Appellate Authority. These orders passed by the Disciplinary Authority as well as the Appellate Authority were challenged before the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) by the petitioner by way of O.A. No.100 of 1989, which was disposed of by the following order :

> “The Learned Counsel for the applicant is prepared to give a copy of the said application of notice / revision again to the department now and would like it to be disposed of. Looking to these facts and circumstances we also feel that the respondents should dispose of the application of notice / revision within three months from the date of the receipt of this judgment according to rules prescribed therefor.”

In view of the aforesaid order dated 9.6.1994 passed by the learned Tribunal in O.A. No.100 of 1989 the petitioner made representation which was rejected by the General Manager by his order dated 8.9.1994. Hence, another O.A. No.656 of 1994 filed at the instance of the petitioner before the learned Tribunal was also disposed of by the following order:

> “When a specific request has been made in the Review Application contending that the penalty was very harsh and a lessor and proportionate punishment should be imposed keeping in view of the peculiar facts of the case, it was incumbent on the part of the Revisional Authority to have considered these aspects and averments and come to a proper finding. We also note the contention that the applicant had put in 21 years of service and was due to superannuate shortly. We find force in the submission of Mr.Trivedi that the order of the Revisional Authority is bad and cryptic and it has not considered the question of reducing the penalty imposed. In the circumstances, we quash and set aside the order of the Revisional Authority dated 8.9.1994, as at Annexure A-5, and direct the Revisional Authority to come to a specific finding on the prayer made by the applicant for awarding a lesser punishment.”

In view of the aforesaid order passed by the learned Tribunal, following order dated 7.9.1998 was passed by the Authority :

> “(ii) In order to consider imposition of lesser punishment as per CAT's directive, I have gone through your service record and find that this is not the first time that you have remained absent from duty without any intimation which could have merited a lesser punishment for this unauthorised absence from 29.12.1982 to 7.3.1983. You have remained absent from duty on number of occasions and the imposition of minor penalties like `stoppage passes / with-holding of increments' did not have a deterrent effect on you and as such this major penalty of `Removal from Service' was imposed on you.”

By way of third O.A. No.102 of 1999, the petitioner had challenged the aforesaid order dated 7.9.1998 before the learned Tribunal, which was also disposed of with the following directions :

> “13.The para (ii) of the above shows that the Revisional Authority has taken into consideration the earlier conduct of the applicant by observing “this is not the first time that you remained absent

> from the duty", "you have remained absent from duty on number of occasions and the imposition of minor penalties like `stoppage of passes/withholding of increments' did not have a deterrent effect on you and as such this major penalty of `Removal from the service' was imposed on you".
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> 14. All these facts were not the part of the charge nor at any of the stage it was brought to the notice of the applicant. As it was not brought to the notice of the applicant that his earlier conduct was also being considered for the purpose of imposing penalty, the applicant had no opportunity to explain. As no such opportunity was given to the applicant, the impugned order with regard to quantum of punishment is vitiated by the fact of non observance of the rules of natural justice.
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> 15. In view of the discussions made above, the OA is allowed and the impugned order dated 07.09.96 is quashed and the revisional authority is directed to pass an appropriate order with regard to the quantum of punishment without taking into consideration the previous lapses on the part of the applicant."

In view of the aforesaid order passed by the learned Tribunal, order dated 23.6.2003 was passed which was challenged in fourth O.A. No.142 of 2004 by the petitioner before the learned Tribunal. However, the said O.A. was dismissed

by the learned Tribunal by its impugned judgment and order dated 24.12.2004 (Annexure-A). The petitioner filed Review Application No.13 of 2005 in O.A. No.142 of 2004 which was also dismissed by the learned Tribunal by its impugned order dated 21.3.2005 (Annexure-B). These impugned orders at Annexures A & B passed by the learned Tribunal are challenged in this petition both under Articles 226 and 227 of the Constitution of India. Strictly speaking, it is a petition under Article 227 of the Constitution of India.

Mr.Khurana learned counsel for the petitioner tried to challenge the impugned orders of dismissal from service passed by the Disciplinary Authority as well as Appellate Authority and all other consequential orders passed by the authorities in pursuance of the directions issued by the learned Tribunal as well as the impugned orders at Annexures A and B passed by the learned Tribunal on merits as well as on the point of quantum of punishment. From the impugned order

dated 21.3.2005 (Annexure-B) passed by the learned Tribunal dismissing the Review Application No.13 of 2005, it is clear that only question of quantum of punishment was to be considered by the learned Tribunal in fourth O.A. No.142 of 2004. Therefore, there is no question of considering other submissions made by Mr.Khurana on the merits of the case.

This brings us to the contention raised by Mr.Khurana for the petitioner on the quantum of punishment. On the quantum of punishment, Mr.Khurana vehemently submitted that looking to the longstanding service of 22 years, petitioner could not have been sacked from service for unauthorizedly remaining absent from service for few days. He submitted that the learned Tribunal had jurisdiction to interfere with the order of punishment as the punishment imposed in this case was highly disproportionate. However, Ms.Mehta for the respondents vehemently submitted that this had happened not for the

first time that the petitioner remained absent from service. She submitted that the petitioner was habitual absentee and used to remain absent from duty quite often and that too for a long period. She, therefore, submitted that considering all the aspects of the case and looking to the post on which he was serving, if the authority terminated his services, then this court should not interfere in such orders. More particularly, when the learned Tribunal has refused to exercise its jurisdiction in favour of the petitioner, in view of the several judgments of the Hon'ble Supreme Court, which have been relied on by the learned Tribunal in its impugned judgment, which is challenged in this petition.

Having heard learned counsel for the parties and having carefully gone through the impugned orders passed by the learned Tribunal, it clearly appears from the impugned order at Annexure-G passed by the Appellate Authority that the petitioner was habitual absentee and he

unauthorizedly remained absent from duty for about 123 days in 1981, 169 days in 1982 and about 3 months in 1983. Considering all these aspects and the fact that in the past i.e. in 1978 he was already punished for remaining absent from duty and yet not improved, if the Authority passed the impugned order of dismissal from service, then certainly such person, who is working as Fireman in essential services, cannot be retained in service. More particularly, when the learned Tribunal itself has refused to interfere with the impugned order of dismissal passed by the Disciplinary Authority relying on the judgments of the Hon'ble Supreme Court in cases of (i) District Judge, Bahraich & Another v/s. Munijar Prasad [2003 SCC (L&S) 779] and (ii) Om Kumar v/s.Union of India [2001 SCC (L&S) 1039] wherein the Hon'ble Supreme Court held that High Court shall not interfere with the quantum of punishment unless Wednesbury principles are violated. That is not the case here.

In view of the earlier order passed by the learned Tribunal in O.A. No.102 of 1999, we are of the considered opinion that the learned Tribunal has not committed any error in dismissing the Review Application also.

However, before parting, we must state that the petitioner is at present 70 years old. If he was in service he would have superannuated in 1994. He lived a miserable life as while in service, he first lost his wife, then his father, then his mother and thereafter his sister-in-law. Therefore, we are of the considered opinion that if proper representation is made to the Disciplinary Authority within one month from today for reconsidering its decision of dismissal only for the purpose of getting pensionary benefits, then the same may be sympathetically considered by the Disciplinary Authority within 3 months from the receipt thereof.

At this stage, it is brought to our notice that his P.F. amount is not so far released by the Authority. Ms.Mehta for the respondents submitted that if the P.F. amount is not released so far, then the same may be released after completing formalities as early as possible and later than 30.11.2006.

With these observations and directions, this petition is dismissed. Rule discharged. No costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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